

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 726 of 1995

For Approval and Signature:

Hon'ble MS.JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 TO 5 - NO

OCHAVLAL D GANDHI

Versus

SANAND NAGARPALIKA

Appearance:

MR RR VAKIL for Petitioner

MR BP TANNA for Respondent No. 1

CORAM : MS.JUSTICE R.M.DOSHIT

Date of decision: 01/08/97

ORAL JUDGEMENT

Petitioner herein is a former employee of the respondent-Municipality (hereinafter referred to as "the Municipality"). Petitioner was appointed as Secretary of Sanand Nagar Panchayat, which by a Notification issued on 15th April, 1994 has been converted into a Municipality. While the petitioner was serving as Secretary, in the

month of May, 1994, an Administrator was appointed for the Municipality. It is the claim of the petitioner that the Administrator had directed the petitioner to find out loopholes in the administration of the outgoing President of the former Nagar Panchayat, however, the petitioner refused to oblige. The petitioner was, therefore, threatened with dire consequences and under such intimidation, the petitioner submitted an application for voluntary retirement on 27th May, 1994. The said application for voluntary retirement was accepted by the Administrator on the same day i.e. on 27th May, 1994 and the petitioner was relieved from service with effect from 1st June, 1994. Under application dated 17th June, 1994, the petitioner requested the Administrator to release the amount of Provident Fund accumulated in the account of the petitioner and to pay other retiral benefits like Group Insurance, Pension etc. However, by telegram sent on 27th August, 1994, the petitioner withdrew the application for voluntary retirement made on 27th May, 1994. Under communication dated 5th September, 1994, the petitioner informed the Administrator to permit the petitioner to join duty as Secretary of the Municipality. The petitioner's application, however, was not responded to favourably. Feeling aggrieved, the petitioner has preferred this petition under Article 226 of the Constitution of India.

Learned advocate Mr. Vakil has appeared for the petitioner. He has submitted that the petitioner was servant of the Municipality which was converted as such under Government Notification dated 15th April, 1994. His service conditions were protected under the said Notification. The petitioner, thus, being a servant of the former Nagar Panchayat , he is governed by the provisions contained in the Bombay Civil Services Rules and the Resolutions and Circulars issued by the Government from time to time concerning the service conditions of its servants. He has relied upon Government Circular issued on 13th March, 1989. Under the said Circular, Government has issued instructions to the effect that the servants of the Panchayat would be entitled to the benefits of the Government Resolutions, Circulars and instructions issued from time to time governing the service conditions of the Government servants. Mr. Tanna, learned advocate appearing for the Municipality does not dispute that the petitioner's service conditions are governed by the provisions contained in the Bombay Civil Services Rules, Government Resolutions, Circulars and instructions issued from time to time governing the service conditions of its employees. Mr. Vakil has relied upon Rule 161 (1) (a)

(ii) of the Bombay Civil Services Rules, and has submitted that the petitioner could have retired from service of the Municipality by giving a notice of not less than three months, provided the petitioner had attained the age of 55 years (petitioner being a Class-III servant). Mr. Vakil has submitted that neither the petitioner had completed 20 years' service, nor had he attained the age of 55 years. He, therefore, could not have validly applied for voluntary retirement. Further such an application was required to be made to the Government, which the petitioner did not do. Keeping in view this provision, the application for voluntary retirement made by the petitioner, can not be said to be legal and valid application and same could not have been given effect to. However, the Administrator in utter disregard of the relevant law, accepted the said application for voluntary retirement on the same day i.e. on 27th May, 1994. Said sanction was not even preceded by a formal Resolution passed by the Municipality. The impugned acceptance of the application for voluntary retirement made by the petitioner is, therefore, non-est and petitioner should be declared to have continued in service. The petitioner by moving an application for amendment today, has placed on record Resolution dated 25th June, 1994 and the Government Notification dated 15th April, 1994. Under communication dated 4th March, 1996, the petitioner has been informed that the Resolution No.12 referred to in the order of voluntary retirement, was not passed on 27th May, 1994, however, the said Resolution was passed on 25th June, 1994. Resolution No.12 passed on 25th June, 1994, records the factum of petitioner's tendering application for voluntary retirement with effect from 1st June, 1994 and the same having been accepted with effect from 1st June, 1994. Mr. Vakil has relied upon a judgment of this court in the matter of NATHUBHAI DAHYABHAI PATEL VS A. AYANGER & ORS (1984 GLH, 300). In the said matter, court was considering scope and ambit of Rule 33-A of the Bombay Civil Services Rules. In that case before the court, the question was that of validity of the resignation tendered by the petitioner therein. On facts, court found that the resignation was not tendered to the appointing authority and that the same was withdrawn before the same reached the appointing authority i.e. the Government. Court further held that, "It is true that if the rules direct the resignation to be given in a particular manner, then the resignation can be given only in that manner." The court accepted the petitioner's plea and held that acceptance of the resignation of the petitioner was ineffective and declared that he continued in service. It should be

noted that in that case, the petitioner had not tendered the resignation to the appointing authority and that before the same reached the appointing authority and any decision was taken thereon, the same was withdrawn by the petitioner. Mr. Vakil has next relied upon a judgment in the matter of DR. U.S.SHAH VS. GUJARAT AGRICULTURAL UNIVERSITY BANASKANTHA & ANR (1988 (2) GLR, 1187). In the said matter also, the court held that petitioner having tendered an application for premature retirement, under the relevant rules, he was entitled to withdraw the same. The court upheld the plea advanced by the petitioner and held that the respondent authorities were not justified in not granting approval to withdrawal of notice of retirement. In that case also, the application for voluntary retirement was withdrawn before the same had become effective either by passage of time or by due approval by the competent authority.

Mr. Tanna, learned advocate appearing for the respondent has contended that considering the language of application made by the petitioner, it was nothing but the resignation. The said resignation was tendered on account of the explanation sought from the petitioner under communication dated 24th May, 1994 for certain financial irregularities committed by him in course of his duty and the Administrator was justified in accepting the same. He has submitted that the petitioner had tendered the said resignation with full awareness of its implications and with a view to avoiding to face the inquiry which was contemplated against him. He has further submitted that the petitioner's action of withdrawal of the said resignation by sending a telegram on 27th August, 1994 also shall have no effect since before that date the petitioner's resignation had already been accepted and given effect to. He has further submitted that looking to the conduct of the petitioner also, the petitioner does not deserve any sympathy and this court shall not exercise its discretionary jurisdiction in favour of the petitioner.

I can not agree with the submission made by Mr. Tanna that the application made by the petitioner on 27th May, 1994, was that of resignation. It is true that in the said application, the petitioner had requested that his voluntary retirement should be made effective from 1st June, 1994 i.e. neither the petitioner had given adequate notice, nor had he tendered pay in lieu of notice. None the less, the same was accepted by the Administrator. Be it noted that though the allegations of malafide are made against Shri B.P.Pandya, the

Administrator, and though it is submitted that the application for voluntary retirement was given under duress, said Shri Pandya has not been impleaded to this petition. The allegations of malafide made against Shri Pandya, therefore, cannot be accepted. Undoubtedly, the application for voluntary retirement can not be said to be made in the manner it should have been made and, therefore, the same can not be said to be a valid application for voluntary retirement. None the less, the fact remains that the same was tendered on 27th May, 1994 and was accepted on the same day. It was given effect to and the petitioner was relieved on 1st June, 1994. Thereafter also, the petitioner gave a reply to the show cause notice on 8th June, 1994 and made an application for release of his monetary dues on 17th June, 1994. Considering this conduct of the petitioner, it must be held that the petitioner had intention to retire from service. It is also obvious that the said application was tendered in view of the show cause notice issued upon the petitioner on 24th May, 1994 and the explanation sought from him regarding the financial irregularities alleged to have been committed by him during the course of his duty. The question is whether the petitioner be permitted to take advantage of his own folly. It was the duty of the petitioner to make a proper application for voluntary retirement to the appropriate authority. If, however, the petitioner has failed to tender proper application and inspite of want of proper application, same is accepted by the Administrator, I do not think that the petitioner should be permitted to take advantage of his own wrong. In the cases relied upon by Mr. Vakil, the resignation/application for voluntary retirement were withdrawn by the concerned petitioners before they reached the competent authority and the decision was taken on the same. In the present case, the application for voluntary retirement was accepted and had become effective on 1st June, 1994. The question of withdrawal of resignation or an application for voluntary retirement would not arise once it becomes effective. I, therefore, can not accept the claim made by the petitioner and treat the application for voluntary retirement as non-est. However, I can not accept the contention of Mr. Tanna that the application in question was infact a resignation as well. It must, therefore, be held that the petitioner tendered an application for voluntary retirement on 27th May, 1994, and he stands retired from service with effect from 1st June, 1994. The petitioner should, therefore, be held to be entitled to all retiral benefits as if he retired from service with effect from 1st June, 1994. If there is any short-fall in completing 20 years of service, such

short-fall should be condoned. The Municipality, therefore, is directed to process the retiral benefits of the petitioner as expeditiously as possible. The petitioner be paid all his retiral benefits within six months from the date he makes an application for the same and completes all the necessary formalities. Mr. Vakil appearing for the petitioner states that the petitioner has yet to receive the amount of Provident Fund accumulated into his account, and the difference of salary, leave encashment, etc. He further states that for releasing these amounts, the Municipality has not to depend upon any other authority and the calculations of the payment is required to be made by the Municipality itself. In that view of the matter, the Municipality is directed to release the amount of Provident Fund due and payable to the petitioner alongwith statutory interest earned thereon and the amount of leave encashment, difference of salary etc. within a period of two months from today.

Petition is allowed to the aforesaid extent only.
Rule is made absolute accordingly. There shall be no order as to costs.

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JOSHI